

70 FR 67427, November 7, 2005

A-570-827
Sunset Review
Public Document
AD/CVD Office 8, ECB

October 31, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Sunset Review of the Antidumping Duty Order on
Certain Cased Pencils from the People's Republic of China

Summary

We have analyzed the substantive response of the interested parties in the sunset review of the antidumping duty order covering Certain Cased Pencils from the People's Republic of China (PRC).¹ We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum.

Below is a complete list of the issues in the sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Order

On November 8, 1994, the Department published its affirmative determination of sales at less-than-fair value (LTFV) with respect to cased pencils from the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China*, 59 FR 55625 (November 8, 1994). The antidumping duty order was published on December 28, 1994. *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66909 (December 28, 1994). On May 11, 1999, the Department issued an amended final determination of sales at LTFV and amended antidumping duty order with respect to cased pencils from the PRC following a court decision. *See Certain Cased Pencils from the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance with Final*

¹We received no response from respondent interested parties.

Court Decision, 64 FR 25275 (May 11, 1999) (*Amended Final LTFV*). The Department established a weighted-average margin of 8.60 percent for China First Pencil Co. (China First), 19.36 percent for Shanghai Lansheng Corp., 11.15 percent for Shanghai Foreign Trade Corporation, zero percent for Guangdong Provincial Stationery & Sporting Goods Import & Export Corporation (Guangdong) for subject merchandise produced by Three Star Stationery Industry Co. (Three Star), 53.65 percent for Guangdong for subject merchandise produced by all other producers, and 53.65 percent for the PRC-wide rate. The Department also published two other notices following court decisions. See *Notice of Court Decision: Certain Cased Pencils from the People's Republic of China*, 62 FR 65243 (December 11, 1997) and *Notice of Decision of the Court of International Trade: Certain Cased Pencils from the People's Republic of China*, 70 FR 56889 (September 29, 2005).

Following the investigation and prior to the first sunset review, the Department conducted three administrative reviews. See *Certain Cased Pencils from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 24636 (May 6, 1997) and amended final results at 62 FR 36491 (July 8, 1997); *Certain Cased Pencils from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 779 (January 7, 1998); and *Certain Cased Pencils from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 2171 (January 13, 1999). In the first sunset review, the Department determined that revocation of the antidumping order would likely lead to continuation or recurrence of dumping. See *Certain Cased Pencils from the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order*, 65 FR 41431 (July 5, 2000) and *Continuation of Antidumping Duty Order: Cased Pencils from the People's Republic of China*, 65 FR 48960 (August 10, 2000).

Following the first sunset review, the Department conducted five additional administrative reviews and initiated and later rescinded two new shipper reviews. See *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 37638 (July 19, 2001); *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002) and amended final results published at 67 FR 59049 (September 19, 2002); *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 43082 (July 21, 2003); *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 29266 (May 21, 2004); and *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42301 (July 22, 2005) and amended final results published at 70 FR 51337 (August 30, 2005). See also *Certain Cased Pencils from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review*, 67 FR 11462 (March 14, 2002); and *Certain Cased Pencils from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review*, 68 FR 62427 (November 4, 2003).

The Department has also conducted two changed circumstances reviews on cased pencils. In *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 14942 (March 27, 2003), the Department determined that certain scent-infused pencils manufactured in the PRC under U.S. patent number 6,217,242 ("Smencils") are excluded from the order. In *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 62428 (November 3, 2003), the Department determined that certain large novelty pencils that meet specific size and graphite characteristics are excluded from the order.

The Department has also issued the following scope rulings. Fiskars Brands, Inc. - certain compasses are not included in the scope of the order (June 3, 2005). *See Notice of Scope Rulings*, 70 FR 55110 (September 29, 2005). Rich Frog Industries Inc. - certain decorated wooden gift pencils are within the scope of the order (February 18, 2005), and Target Corporation - RoseArt Clip 'N Color is excluded from the scope of the order (March 5, 2005). *See Notice of Scope Rulings*, 70 FR 41347 (July 19, 2005). Barthco Trade Consultants - twist crayons are outside the scope of the order (May 22, 2003); Target Corporation - "Hello Kitty Fashion Totes" are outside the scope of the order (September 29, 2004); Target Corporation - "Hello Kitty Memory Maker" is outside the scope of the order (September 29, 2004); and Target Corporation - "Crayola the Wave" is outside the scope of the order (September 29, 2004). *See Notice of Scope Rulings*, 70 FR 24533 (May 10, 2005). Creative Designs International, Ltd. - "Naturally Pretty," a young girl's 10 piece dress-up vanity set, including two 3-inch pencils, is outside the scope of the order (February 9, 1998). *See Notice of Scope Rulings*, 63 FR 29700 (June 1, 1998). Nadel Trading Corporation - a plastic "quasi-mechanical" pencil known as the Bensia pencil is outside the scope of the order (September 15, 1997). *See Notice of Scope Rulings*, 62 FR 62288 (November 21, 1997).

On January 31, 2005, the Department published a notice of initiation of administrative review of the order covering the period December 1, 2003, through November 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005). The preliminary results are currently due December 16, 2005.

Background

On July 1, 2005, the Department initiated the second sunset review of the antidumping duty order on cased pencils from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (Sunset) Reviews*, 70 FR 38101. The Department invited parties to comment, and received a notice of intent to participate from domestic interested parties Sanford Corp. (Sanford); General Pencil Co., Inc. (General); Rose Moon Inc. (Rose Moon); Tennessee Pencil Co. (Tennessee); and Musgrave Pencil Co. (Musgrave), pursuant to sections 351.218(d)(1)(i) and 351.218(d)(3)(i) of the Department's regulations. Sanford, General, Rose Moon, Tennessee, and Musgrave claimed interested party status under section 771(9)(C) of the Act as U.S. manufacturers of cased pencils. The Department received a complete substantive response from the domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department did not receive responses to

the notice of initiation from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments made collectively by the domestic interested parties participating in this proceeding.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

Domestic interested parties argue that revocation of this order would likely lead to the continuation or recurrence of dumping because dumping has continued at a higher than *de minimis* level throughout the entire period after the order's issuance. In addition, they argue that the China-wide rate has doubled since the issuance of the order, from 53.65 percent to 114.90 percent. They contend that, in the first sunset review of pencils, the Department determined that as margins above *de minimis* persisted throughout the life of the order, the dumping of pencils from the PRC continued after the issuance of the order. Domestic interested parties claim because the same conditions persist now, the Department should reach the same result as it did in the first sunset review of this antidumping duty order. Only one exporter of pencils, Tianjin Custom Wood Processing Co. (Tianjin), has received an antidumping duty rate of zero, but, domestic interested parties state, the Department has rescinded subsequent administrative reviews of Tianjin because it has had no exports of pencils to the United States. Domestic interested parties infer that since Tianjin has had no exports of pencils to the United States, it is unable to sell its products to the United States without dumping. See "751(c) Five-Year Sunset Review of the Antidumping Duty Order Against Cased Pencils from the People's Republic of China; Substantive Response of Domestic Interested Parties" (August 1, 2005) (Domestic Interested Parties' Substantive Response) at pages 9 and 10.

Domestic interested parties maintain that, in the first sunset review, the Department noted that imports from China of cased pencils fell in the years immediately following the imposition of the antidumping duty order but later increased. They state that imports of subject merchandise in 2004 (the most recent full-year data) surpassed the quantities observed in the previous sunset review. Nevertheless, they argue, higher than *de minimis* margins still justify a finding that dumping is likely to continue or recur if the order is revoked. See Domestic Interested Parties' Substantive Response at pages 10 and 11.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action (SAA), H. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. In this case, the Department found dumping at above *de minimis* levels in the original antidumping duty investigation of cased pencils from the PRC. Since the issuance of the antidumping duty order on cased pencils from the PRC, the Department has conducted a number of reviews in which it found that dumping continued at levels above *de minimis*.

In addition, pursuant to 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. Import statistics on the subject merchandise cited by domestic interested parties and those examined by the Department demonstrate that the level of imports increased significantly after the issuance of the order, and to date, import volumes have exceeded pre-order levels. *See* Domestic Interested Parties' Substantive Response at 11 and the attached ITC Dataweb statistics. However, import volumes are not by themselves dispositive of the likelihood of the continuation or recurrence of dumping. We agree with the domestic interested parties that dumping margins and cash deposits rates at or above *de minimis* levels remain in effect for several PRC companies. The Department finds that the existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping, if the order were to be revoked. As Congress explained in the SAA, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed. *See* SAA at 890. Therefore, the Department determines that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

Domestic interested parties state that the dumping margins that are likely to prevail if the order were revoked in most cases will be the margins determined in the final determination in the original LTFV investigation. Domestic interested parties also point out that the PRC-wide rate increased significantly following the imposition of the order, to 114.90 percent. *See* Domestic Interested Parties' Substantive Response at 11 and 12.

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "PRC-Wide" rate from the investigation. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only rate on the record that reflects the behavior of exporters without the discipline of an order or suspension agreement

in place. Under certain circumstances, however, the Department may select a more recent margin to report to the ITC. *See Potassium Permanganate from the People's Republic of China; Five-year ("Sunset") Review of Antidumping Duty Order; Final Results*, 70 FR 24520 (May 10, 2005). We found no evidence on the record that the more recently calculated PRC-wide rate of 114.9 percent is a better indicator of the margins likely to prevail in the absence of an order. Thus, we are using the margins from the final determination as there is no reason to doubt their validity, and these are the rates that are most probative of the behavior of exporters without the discipline of an order.

Final Results of Review

We determine that revocation of the antidumping duty order on certain cased pencils from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
China First Pencil Co., Ltd./Three Star Stationery Industry Co. ²	8.60
Shanghai Lansheng Corp.	19.36
Shanghai Foreign Trade Corp.	11.15
Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. ³	53.65
PRC-Wide Rate	53.65

² The Department determined that China First Pencil Co. Ltd. and Three Star Stationery Industry Co. (Three Star) should be treated as a single entity in the December 1, 1999 through November 30, 2000 review. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002) (*1999-2000 Final Results*) and amended final results at 67 FR 59049 (September 19, 2002).

³ The Department originally excluded from the order exports made by Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong) and produced by Three Star. However, the Department determined in the 1999-2000 review that the Guangdong/Three Star sales chain was no longer excluded from the order, and that all merchandise exported by Guangdong was subject to the cash deposit requirements at the PRC-wide rate. *See 1999-2000 Final Results*.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)